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7

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION
10

11 THOMAZ HENRIQUE SERRA, an
individual; MARIA TAMIRIS
12 CAVALCANTE DA SILVA, an
individual,
13

14 Plaintiff,

15 vs.

16 ADAM DANIEL HUCKINS, an
individual; ALLY, LLC, a business
entity of unknown form; and DOES 1 to
17 20,
18

19 Defendants.
20

Case No. 2:22-cv-5099

**DEFENDANTS' NOTICE OF
REMOVAL TO FEDERAL COURT**

21 **NOTICE OF REMOVAL OF CIVIL ACTION TO PLAINTIFF, HIS**
22 **ATTORNEYS OF RECORD, AND THE CLERK OF THE UNITED STATES**
23 **DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA:**

24 PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446,
25 Defendants, ADAM DANIEL HUCKINS and ALLY FINANCIAL, INC. (Doe 1)
26 ("Defendants") hereby remove this action from the Superior Court of California,
27 County of Orange, to the United States District Court for the Central District of
28 California.

1 1. On or about December 1, 2021, Plaintiff THOMAZ HENRIQUE
2 SERRA (“Plaintiff”) filed a Complaint in Superior Court of California in and for the
3 County of Orange, entitled, *Thomaz Henrique Serra, et al. v. Adam Daniel Huckins,*
4 *et al.*, Case No. 30-2021-01234123-CU-PA-CJC (“Complaint”), alleging the
5 following causes of action: (1) motor vehicle; (2) general negligence; and (3) loss of
6 consortium. A true and correct copy of the Complaint is attached hereto as **Exhibit**
7 **A**. True and correct copies of the Summons and other notices served therewith are
8 attached hereto as **Exhibit B**.

9 2. An answer to the Complaint was filed on behalf of ADAM DANIEL
10 HUCKINS and ALLY, LLC on or about February 2, 2022. (Declaration of I. Justine
11 Kilpatrick (“Kilpatrick Decl.”) ¶ 3.)

12 3. MARIA TAMIRIS CAVALCANTE DA SILVA dismissed her
13 complaint on or about February 25, 2022. A true and correct copy of the dismissal
14 filed by Maria Tamiris Cavalcante Da Silva is attached hereto as **Exhibit C**.

15 4. During discovery, the parties determined that the correct Defendant was
16 Ally Financial, Inc. (Kilpatrick Decl. ¶ 5.) A true and correct copy of the Amendment
17 to the Complaint, filed on May 17, 2022 is attached hereto as **Exhibit D**.

18 5. On June 24, 2022, a Request for Dismissal was entered as to Defendant,
19 Ally, LLC. A true and correct copy of the Request for Dismissal of Ally, LLC is
20 attached hereto as **Exhibit E**. A true and correct copy of the state court file
21 constituting all process, pleadings, and other orders filed in the state court action are
22 attached as **Exhibit F**.

23 **I. NOTICE OF REMOVAL IS TIMELY**

24 6. This Notice of Removal is timely, as it was filed within 30 days of receipt
25 by Defendants ALLY FINANCIAL, INC. and ADAM DANIEL HUCKINS of the
26 dismissal of ALLY, LLC on June 24, 2022, from which it was first ascertained that
27 the case is one which has become removable based on diversity jurisdiction.

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1 **II. VENUE**

2 7. Venue is proper in this district, pursuant to 28 U.S.C. § 1441(a), because
3 it embraces the state court where the removed action has been pending.

4 **III. DIVERSITY JURISDICTION EXISTS**

5 6. This action is one over which this Court has original jurisdiction under
6 28 U.S.C. § 1332(a) and is one which may be removed by Defendant pursuant to 28
7 U.S.C. § 1441. This is a civil action where, based on information and belief, Plaintiff
8 claims an amount in controversy that exceeds \$75,000, exclusive of interest and costs,
9 and is between citizens of different states.

10 7. For diversity purposes, a corporation is a citizen of the state in which it
11 is incorporated and the state that constitutes its principal place of business. 28 U.S.C.
12 § 1332(c)(1). A corporation's principal place of business is the state in which its "high
13 level officers direct, control and coordinate the corporation's activities." See *Hertz v.*
14 *Friend*, 130 S. Ct. 1181, 1186 (2010). The Supreme Court has also held that the
15 place of citizenship "should normally be the place where the corporation maintains
16 its headquarters—provided that the headquarters is the actual center of direction,
17 control, and coordination." *Id.*

18 8. Defendant ALLY FINANCIAL, INC. is, and at all times alleged in the
19 Complaint has been, a corporation incorporated under and by virtue of the laws of the
20 State of Delaware. (Declaration of Leland Coblentz ("Coblentz Decl.") ¶ 4.) The
21 majority of Defendant ALLY FINANCIAL, INC.'s high-level executive, marketing,
22 and legal functions take place in Charlotte, North Carolina. Corporate headquarters
23 is located in Charlotte, North Carolina. (Coblentz Decl. ¶¶ 4-5.) Accordingly,
24 Defendant ALLY FINANCIAL, INC.'s principal place of business is Charlotte, North
25 Carolina for diversity purposes.

26 9. Because Defendant ALLY FINANCIAL, INC. was incorporated in the
27 State of Delaware and has its principal place of business in the State of North Carolina,

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1 Defendant ALLY FINANCIAL, INC. is a citizen of the State of Delaware and North
2 Carolina for diversity purposes.

3 10. Defendant ADAM HUCKINS resides in Mason, Ohio. (Declaration of
4 Adam Daniel Huckins (“Huckins Decl.”) ¶ 4.)

5 11. Based on the allegations set forth in the Complaint, the alleged incident
6 occurred in Orange County, California. Based on information and belief, Plaintiff
7 THOMAZ HENRIQUE SERRA resides in Orange County, California. (Kilpatrick
8 Decl. ¶ 2.) Plaintiff is therefore a citizen of the State of California. See 28 U.S.C.
9 1332(a)(1) (an individual is a citizen of the state in which he or she is domiciled);
10 *State Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994)
11 (recognizing that residence is prima facie evidence of domicile for purposes of
12 determining citizenship).

13 12. The citizenship of unnamed fictitiously named “Doe” defendants is
14 disregarded for removal purposes. 28 U.S.C. § 1441(a).

15 13. Based on the foregoing, complete diversity between the adverse parties
16 exists.

17 **IV. THE AMOUNT IN CONTROVERSY REQUIREMENT IS SATISFIED**

18 14. The amount in controversy appears to exceed the sum or value of
19 \$75,000 exclusive of interest and costs. Removal is proper if, from the allegations of
20 the Complaint and the Notice of Removal, it is more likely than not that the claim
21 exceeds \$75,000. 28 U.S.C. § 1446; *Sanchez v. Monumental Life Ins. Co.*, 102 F. 3d
22 398, 403-04 (9th Cir. 1996).

23 15. Defendants deny any and all liability to Plaintiff, and disputes the nature
24 and extent of Plaintiff’s claimed injuries. However, in written discovery, Plaintiff
25 contends he was riding a motorcycle at the time of the incident and, as a result of the
26 incident, sustained *inter alia* multiple fractures, including a broken spine and
27 concomitant loss of use of arms and legs. Based on a conservative good faith estimate
28 of the value of the alleged damages in this action and the significant experience of

1 Defendant's counsel, I. Justine Kilpatrick, in defending similar personal injury cases
 2 involving claimed injuries for hospital and medical expenses, it is believed the amount
 3 in controversy in this case exceeds \$75,000, exclusive of interest and costs.
 4 (Kilpatrick Decl. ¶ 7); see *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F. 3d 373,
 5 376-377 (9th Cir. 1997) (holding that where a complaint does not allege a specific
 6 dollar amount, the case is removable if the removing defendant shows by a
 7 preponderance of the evidence that the jurisdictional amount is present); *Simmons v.*
 8 *PCR Tech.*, 209 F. Supp. 2d 1029, 1031-35 (ND. Cal. 2002) (holding that a plaintiff's
 9 damage claim, including lost wages, medical expenses, and emotional distress and
 10 attorneys' fees, was enough to put the amount in controversy above \$75,000).

11 WHEREFORE, the proceeding paragraphs establishing that the Court has
 12 original jurisdiction over this action pursuant to 28 U.S.C. § 1331, Defendants
 13 respectfully gives notice that the action pending in the Superior Court of the State of
 14 California in and for the County of Orange and captioned *THOMAZ HENRIQUE*
 15 *SERRA, Plaintiff v. ADAM DANIEL HUCKINS, et al.*, Case No. 30-2021-01234123-
 16 CU-PA-CJC, is removed to the United States District Court, for the Central District
 17 of California, Southern Division

18
 19 DATED: July 22, 2022

LEWIS BRISBOIS BISGAARD & SMITH LLP

20
 21
 22 By:


 Esther P. Holm

I. Justine Kilpatrick

Attorneys for Defendants, ADAM
 DANIEL HUCKINS and ALLY
 FINANCIAL, INC.

FEDERAL COURT PROOF OF SERVICE

Serra, Thomas

STATE OF CALIFORNIA, COUNTY OF ORANGE

At the time of service, I was over 18 years of age and not a party to the action. My business address is 650 Town Center Drive, Suite 1400, Costa Mesa, CA 92626. I am employed in the office of a member of the bar of this Court at whose direction the service was made.

On July 22, 2022, I served the following document(s): DEFENDANTS' NOTICE OF REMOVAL TO FEDERAL COURT

I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

SEE ATTACHED SERVICE LIST

The documents were served by the following means:

☒ (BY E-MAIL OR ELECTRONIC TRANSMISSION) Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on July 22, 2022, at Costa Mesa, California.


Stacy Gibboney

SERVICE LIST

Serra, Thomas

Case No. 30-2021-01234123-CU-PA-CLC

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